IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2542 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMMAD GULAM HUSSIAN HAFIJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2542 of 2001

MS SUMAN PHAWAH for M/S THAKKAR ASSOC. for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), Commissioner of Police, Surat City, Surat, vide order dated March 17, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated March 17, 2001 manifest that the petitioner is a dangerous person within the meaning of Section 2(c) of the Act and as two cases for commission of the offences under Chapter 17 of the IPC are registered against the petitioner. Besides this, statements of two witnesses are recorded in an unregistered offences, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Ms Suman Phawah, learned advocate for the petitioner has restricted her arguments to the fact that subjection satisfaction recording by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. In order to substantiate her arguments she contended that the detaining authority has not supplied the relevent documents which have been relied on and referred to in the impugned order by the detaining authority, and therefore, according to her the continued detention of the petitioner/detenu is held illegal and therefore on this ground alone petition deserves to be allowed by setting the petitioner at liberty forthwith. So far as the privilege claimed under Section 9(2) of the Act by the detaining authority is concerned, it cannot be called genuine as the reply affidavit has not been filed by the detaining authority. She, therefore, urged to allow the petition on the aforesaid two grounds by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

5. Mr. S.S.Patel, learned AGP has appeared on behalf of the respondent State has opposed the petition. He, however, does not dispute the factual aspect about the fact that the documents relating to the bail

application has not been supplied to the petitioner/detenu. He, however, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. A similar question arose before the Supreme Court in the case of MOHD. ZAKIR V. DELHI ADMINISTRATION AND OTHERS - 1982 SC 696. In the said case it has been observed that it is the constitutional mandate which requires detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that the question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution.

7. A similar view is also expressed in the case of KOLI SURESHBHAI BALABHAI PARMAR VS. DISTRICT MAGISTRATE, BHAVNAGAR AND OTHERS 2000 (2) GLH 540. The Supreme Court in the said case has held that non-supply of documents relied upon in the grounds of detention is fatal to continue detention. Detenu need not show that any prejudice is caused to him. Denial of making effective representation, copy of bail order is a vital document, what applies to a document would equally apply to furnishing translated copy of documents in the language known to detenu.

8. Applying the aforesaid principle laid down by the Supreme Court as well as this Court to the facts of the present case, at the cost of repetition, be it stated that there is no dispute that the detaining authority has not supplied the papers relating to bail application to the petitioner/detenu and therefore it can be said that non-supply of those papers has seriously caused prejudice the right of the petitioner to make an effective representation. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution and therefore continued detention is held illegal and on this sole count the petition deserves to be allowed by setting the petitioner at liberty forthwith.

9. Besides this, the detaining authority has claimed the privilege under Section 9(2) of the Act by not disclosing the identities of those anonymous witnesses whose statements are recorded in an unregistered cases.

It may be noted that the detaining authority has not filed any affidavit in reply and, therefore, I am of the opinion that the privilege claimed by the detaining authority cannot be called genuine in the absence of affidavit in reply and therefore, on the aforesaid two grounds, the order of detention stand vitiated and the petition deserves to be allowed by setting the petitioner at liberty forthwith.

10. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated March 17, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*